

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

GREG DAVIS, AS NEXT FRIEND *
AND NATURAL GUARDIAN OF *
JOSHUA DAVIS *

PLAINTIFF, *

vs. *

HOUSTON COUNTY, ALABAMA *
BOARD OF EDUCATION *

DEFENDANT. *

CASE NO.1:06-CV-953-MEF

DEFENDANT S REPLY TO PLAINTIFF S ANSWER
TO MOTION TO STRIKE

THE DEFENDANT, Houston County Board of Education,
(hereinafter HCBOE or Board), replies to the Plaintiff s
(hereinafter Davis), Answer to Motion to Strike:

1. In his Answer to Motion to Strike Davis argues that
the Board somehow qualifies Freet as an expert by simply
deposing him in this matter.

2. The Board deposed Freet because in initial
disclosures Davis produced a letter from Freet discussing
the events of the football game at the center of this
dispute and Freet s beliefs about Josh Davis s normal
temperament. This letter, however, simply does not meet the
requirements of Fed. R. Civ. P. 26 concerning expert reports
and disclosures.

3. Davis never designated Freet as an expert; because his letter was disclosed the Board deposed Freet to determine his credentials and the facts, if any, about this matter that were within his personal knowledge. The Board simply asked Freet's credentials as background information.

4. As of this reply, Davis has still failed to designate Freet as an expert. Davis has not designated any expert, nor has he produced any expert report, meeting the requirements of Fed. R. Civ. P. 26 and this Court's Uniform Scheduling Order (Doc. 7).

5. Freet is not qualified to give expert testimony on medical issues. Freet is not a medical doctor or nurse and he has not attended any classes attempting to become such. (Freet Depo. 19, Lines 3-18). Freet is a licensed professional counselor with Master's degree in psychology and counseling. (Freet Depo. 8 lines 7-11, 15 lines 3-16).

6. Paragraph 7 of Davis's Answer to Motion to Strike (Doc. 18) concerns the authentication of Freet's letter. Simply attaching a document as an exhibit to a deposition does not authenticate that document. See, Fed. R. Evid. 901, 902.

WHEREFORE, THE BOARD moves the Court to STRIKE Plaintiff s Exhibit 2, Document 14-2, pages 2, 3 and 4; Document 14-3, pages 12, 13, 14, 15 and 16; and any reference in deposition or otherwise to Freet s conclusions that Josh Davis was diagnosed and treated for a concussion and/or the possible effects of a concussion on Josh s behavior.

HARDWICK, HAUSE, SEGREST & WALDING

BY: /s/ Jere C. Segrest
Jere C. Segrest (SEG005)
ASB-1759-S-80J

BY: /s/ Kevin Walding
Kevin Walding (WAL036)
ASB-8121-I-69J

BY: /s/ Patrick B. Moody
Patrick B. Moody (MOO110)
ASB 0902-T-73M
Post Office Box 1469
Dothan, Alabama 36302
Phone: (334) 794-4144
Fax: (334) 671-9330
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that, this date, I have served a copy of this document on the following individual(s) or attorney(s) of record by placing a copy in the United States Mail in a properly addressed envelope with adequate postage.

Malcolm R. Newman, Esq.
Attorney at Law
Post Office Box 6137
Dothan, Alabama 36302

This the 9th day of January, 2008.

/s/ Kevin Walding
Of Counsel